

BEFORE THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) FINAL ORDER
NO. 24199-s4100 BY Vance Pettapiece)
)

* * * * *

Exceptions to the Proposal for Decision entered in this matter have been filed with the Department by the Applicant Pettapiece and the Objector Montana Power Company.

The objections of the Applicant relating to the proposed acreage to be irrigated are well-founded. The Applicant, in fact, intends to irrigate 320 acres, more or less, comprised of 15 acres in the NE1/4 and 25 acres in the SE1/4 of Section 35, Township 18 North, Range 1 West, all in Cascade County; and 85 acres, more or less, in the NE1/4 and 25 acres, more or less, in the NW1/4 and 45 acres, more or less, in the SW1/4 and 125 acres, more or less, in the SE1/4 of Section 36, Township 18 North, Range 1 West, all in Cascade County. Findings of Fact No. 2 is hereby amended accordingly. Finding of Fact No. 7, premised on the mistaken acreage, is stricken. Conclusion of Law No. 9 is hereby amended accordingly to note the place of use as being 320 acres with 85 acres, instead of 30 acres, of this quantity being located in the NE1/4 of Section 36, Township 18 North, Range 1 West, all in Cascade County.

This error in acreage also permeates Finding of Fact 23 such that it is hereby amended to read that 400 acre-feet is the most water the Applicant can reasonably use for his intended purposes in any given year. Conclusion of Law No. 4 is also hereby amended to conform with this 400 acre-foot amount.

Montana Power Company objects and complains voluminously of the Proposal for Decision. Its Objection No. 2 is specious. If Montana Power Company desires a transcript and an opportunity to submit briefs, it need only request and submit the same. See generally, MCA 2-4-614 (2) (1981).

Montana Power Company also complains of the receipt into the record of a report prepared by Glenn Smith, a department employee, relating and describing the soil types and characteristics of the proposed place of use. The Proposal for Decision was misleading in suggesting that Montana Power Company was not "substantially prejudice" by the receipt of this report. In fact, Montana Power Company is not at all prejudiced. This report is material only to the issue of beneficial use, and in view of the fact that the decretal portion of the Proposal for Decision fully protects Montana Power Company's rights, the Objector has no vested interest in whether or not the waters claimed herein will be used beneficially. See generally, Horse Creek Conservation Dist. v. Lincoln Land Co., 54 Wyo. 320, 92 P. 2nd 572 (1939), Affolter v. Rough and Ready Irrigating Ditch Co., 60 Col. 519, 154 P. 738 (1916), Holmstrom Land Co. v. Meagher County Newlan Creek Water Dist., 36 St. Rep. 1403, 605 P. 2nd

1060 (1979). However, even treating Montana Power Company as sort of and an amicus curiae for the limited purpose of contesting the beneficial use of Applicant's proposed use, see generally, MCA 2-4-102 (7) (1981), the report is still with probative force for the reasons contained in the Proposal for Decision.

The Department will not take note of the Notices of Appropriation propounded by the Montana Power Company, nor will it recognize any probative value of the so-called "Broadwater" Case. It is not necessary to consider these matters in reaching a decision in this matter, and for the reasons contained in the Proposal for Decision, they are hereby denied any probative force.

Nor will the Department make findings relating to other hydroelectric facilities owned by the Montana Power Company on the Missouri River in Jamestown. It is extremely unlikely that Cochrane with its relatively high turbine capacity will spill water at such times that Montana Power Company's other relatively small hydroelectric facilities will fail to spill, despite the fact that there are intervening tributaries that augment Montana Power Company's downstream facilities. In these circumstances, such findings are not necessary to the disposition to this matter, and the Department will not encourage jurisdictional conflicts with the Water Courts in the adjudication process by attempting to in any way adjudicate all of Montana Power Company's rights.

The complaints of Montana Power Company as to the vagueness they attribute to certain findings and conclusions is immaterial in light of the disposition of this matter. However, the Department concludes that the August 10th termination date for cessation of diversions is unrealistically optimistic. Only twice in 20 years of most recent record has Cochrane Dam spilled water after August 1st and within the time of use proposed by the Applicant. In those instances, the length of spill was either so slight as to be inconsequential or so late in the irrigation season that it is doubtful whether any advantage could have been made thereof. (The Department regards the depiction of water flows in July of 1969, in Montana Power Company's exhibit 10, to be a scrivener's error. It would truly be remarkable if two consecutive months exhibited identical flows of water.)

Findings of Fact No. 18 and 19 are hereby amended to reflect the lack of unappropriated water after August 1st of any given year.

Although not necessary to the disposition of this matter, the Department also amends Finding of Fact No. 11 and Conclusion of Law No. 12 to reflect that Montana Power Company has historically used up to 10,080 cubic feet per second of the Missouri River flow for the production of electrical power for sale at Cochrane Dam, and has the current capacity and need for that volume of water on occasion. Finding of Fact No. 13 is also amended to reflect that Montana Power Company stores up to 5,870 acre-feet in conjunction with its Cochrane Dam use. Although the evidence is unclear as to whether the figures propounded by Montana Power

Company reflected only "active storage" or the entire component of storage, no prejudice can accrue to Montana Power Company by amending the findings so as to reflect their claim of a lesser volume of storage. Finding of Fact No. 13 is also amended to reflect that this storage at Cochrane Dam provides hydraulic head for the production of electrical power, such that a given volume of water will produce more electricity with such storage or additional increments of storage than would be possible without the same. This relationship of hydraulic head to production of electrical power is an indisputable fact, although the record herein is insufficient to describe in detail the precise measure of the effect of such storage on Montana Power Company's electrical production.

None of the other Montana Power Company objections merit attention in light of the disposition of the present Application. The Proposal for Decision is hereby incorporated herein and made part hereof, accept insofar as it is explicitly modified herein.

WHEREFORE, based on these Findings of Facts and Conclusions of Law, the following Proposed Order is hereby issued. Subject to the terms, restrictions, limitations suscribed below, Application for Beneficial Water Use Permit No. 24199-s410J is

hereby granted to Vance Pettapiece to appropriate 2200 gallons per minute up to 400 acre-feet per year for new sprinkler irrigation. The source of supply shall be the Missouri River at a point in the SE1/4 of the NE1/4 of the NE1/4 of Section 35, Township 18 North, Range 1 West, and at an alternate point in the SW1/4 of the NW1/4 of the NW1/4 of Section 36, Township 18 North, Range 1 West, all in Cascade County. The place of use shall be 320 acres, more or less, comprised of 15 acres in the NE1/4 and 25 acres in the SE1/4 of Section 35, Township 18 North, Range 1 West; and 85 acres in the NE1/4 and 25 acres in the NW1/4 and 45 acres in the SW1/4 and 125 acres in the SE1/4 of Section 36, Township 18 North, Range 1 West, all in Cascade County. In no event shall the waters provided for herein be diverted from the above-name source of supply prior to May 1st of any given year nor subsequent to August 1st of any year. The priority date for this Permit shall be August 28, 1979, at 11:00 a.m..

This Permit is issued separate to the following express conditions, restrictions, and limitations.

A. Any rights evidenced herein are subject to all prior and existing rights, and any final determination of these rights provided by Montana law. Nothing herein shall be construed to authorize diversions by the Permittee to the detriment of any senior appropriator.

B. This Permit is expressly subject to the use of water by the Montana Power Company for generating electrical power for sale at its Cochrane Dam facility. The Permittee shall not divert

water pursuant to this Permit unless and until this Cochrane Dam facility is spilling water. "Spilling" as used herein refers to water passing over the impoundment structure of Cochrane Dam.

C. Nothing herein shall be construed to effect or reduce the Permittee's liability for damages which may be caused by the exercise of this Permit. Nor does the Department, in issuing this Permit, acknowledge any liability for damages caused by the exercise of this Permit, even if such damage is the necessary and unavoidable consequence of the same.

D. The Permittee shall in no event cause to be diverted from the source of supply pursuant to this Permit more water than is reasonably required for the purposes provided for herein. At all times when the water is not reasonably required for these purposes, the Permittee shall cause and otherwise allow the waters to remain in the source of supply.

E. The Permittee shall not install or allow to be installed pumping devices with rated capacities in excess of 2200 gallons per minute.

F. In the event that the rights of Montana Fish and Game Commission on the Missouri River are quantified at a later time, this Provisional Permit shall be accordingly amended and modified to protect the prior rights of Montana Fish and Game Commission.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DONE this 2nd day of March, 1982.

Gary Fritz
Gary Fritz, Administrator
Department of Natural
Resources and Conservation
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Matt Williams
Matt Williams, Hearing Examiner
Department of Natural Resources
and Conservation
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BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF APPLICATION)	
FOR BENEFICIAL WATER USE)	PROPOSAL FOR DECISION
PERMIT NO. 24199-s41QJ BY)	
VANCE PETTAPIECE)	

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedures Act, a hearing in the above entitled matter was held in Cascade, Montana, on April 30, 1981. The Applicant appeared personally and through Counsel James Regnier. The Montana Power Company appeared through Larry Gruel and was represented by Counsels Jock Anderson and K. Paul Stahl of Gough, Shanahan, Johnson and Waterman. The Department of Natural Resources and Conservation was represented at the hearing by Sam Rodriguez, Area Office Supervisor for the Department's Lewistown field office.

STATEMENT OF THE CASE

On August 28, 1979, an Application for Beneficial Water Use Permit was filed with the Department of Natural Resources and Conservation by Vance Pettapiece. This application seeks 2200 gallons per minute up to 665.6 acre-feet per year for new sprinkler irrigation from May 1 to October 15, inclusive, of each year. The place of use is alleged to be 320 acres more or less in Sections 35 and 36 of Township 18 North, Range 1 West, all in

River in Cascade County, Montana, and upstream from the Black Eagle, Rainbow, Ryan, Cochrane, and Marony dams and reservoir impoundments, and that there is insufficient unappropriated water available for the proposed use without adversely affecting the downstream water rights of the Montana Power Company and other senior appropriators.

EXHIBITS

The Applicant offered into evidence the following exhibits, to-wit:

- A-1: A copy of an aerial map upon which has been depicted the Applicant's proposed place of use.
- A-2: A copy of a map depicting the proposed place of use with reference to the source of supply.
- A-3: A copy of a portion of a United States Geological Survey map depicting the proposed places of use in relation to the source of supply, together with the proposed point of diversion.
- A-4: A schematic prepared by a Department employee referencing the proposed place of use with the source of supply and the proposed points of diversion.
- A-5: A memorandum prepared and executed by a Department employee setting forth the results of his inspection of the proposed place of use.
- A-6: A report by a soil scientist of the Department setting forth the estimated soil types in the area, and the estimated amounts of water necessary for Applicant's proposed uses.
- A-7: The Applicant's Application for Beneficial Water Use Permit filed in this matter.

All of the Applicant's exhibits were received into the record.

PRELIMINARY MATTERS

The parties hereto made certain evidentiary objections during the course of this proceeding. Montana Power Company objects to the receipt into the record of the memorandum prepared by Glenn Smith. Mr. Smith did not appear at the hearing in this matter, and therefore, Montana Power Company was without opportunity to cross examine the said declarant.

It is difficult to reconcile the exculpation of these proceedings from the common law and statutory rules of evidence with the party's right of cross examination. See MCA 2-4-612(5) (1979), see also Hert v. J. J. Newberry Co., 35 St. Rep. 1345, _____ Mont. _____ 587 P.2d 11 (1978). It is not necessary in the present circumstance to resolve this issue, however, since it appears that Montana Power Company is not substantially prejudiced by the receipt of this report. The report by its own terms relies on Soil Conservation data. It is a well-known fact that such data often forms the basis for a conclusions reached by persons in Mr. Smith's particular field. Thus, this SCS data need not itself pass the admissibility hurdles even in judicial proceedings. See MRE Rule 703. Moreover, this report has some of the earmarks of a "business record." Mr. Smith regularly compiles such statements and reports pursuant to a duty attendant to his employment status. Since the Department has no apparent interest in any particular outcome of this proceeding, this report thus finds itself within some of the indicia of probativeness outlined in MRE Rule 803(8). At any rate, there is

rights that Montana Power Company claims herein, except for those related to the Cochrane Dam facility, in relation to alleged interferences by upstream appropriators. However, the case was ultimately reversed on appeal for want of subject matter jurisdiction. See 139 F.2d, 998 (9th Cir. 1944). Suffice it to say for present purposes that this "Broadwater Case", together with its leachings in Exhibit No. 9, have played no part in the disposition of this matter.

The Hearing Examiner, after considering the evidence herein, and now being fully advised in the premises, hereby makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The Department of Natural Resources and Conservation has jurisdiction over the subject matter herein and over the parties hereto, whether they have appeared or not.

2. The Applicant has a bona fide intent to appropriate water pursuant to a fixed and definite plan, and he is not attempting to speculate in the water resource. However, the Applicant in fact intends to irrigate only approximately 270 acres. The proposed place of use will be comprised of 15 acres more or less in the NE1/4 and 25 acres more or less in the SE1/4 of Section 35, Township 18 North, Range 1 West, all in Cascade County; and 35 acres more or less in the NE1/4 and 25 acres more or less in

7. The full 665.6 acre-feet per year claimed herein by the Applicant is an unreasonable quantity of water for Applicant's declared purposes and would result in the waste of the water resource. The aforesaid quantity was predicated on 320 irrigable acres. Reducing this amount proportionately to track with Applicant's present intentions, a total volumetric limit of 562 acre-feet is reasonable in light of Applicant's present intentions.

8. The Application in this matter was duly and regularly filed with the Department of Natural Resources and Conservation on August 28, 1979, at 11:00 a.m.

9. There are surplus or unappropriated waters in the Missouri River at the flow rate the Applicant seeks to appropriate the water at some times in most years.

10. The Montana Power Company owns and controls an impoundment structure known as the Cochrane Dam located on the Missouri River mainstem below Great Falls, Montana. The waters of the Missouri River mainstem are used by Montana Power Company through the operation of this impoundment structure to generate electrical power for sale.

11. The Montana Power Company has utilized up to 10,000 cubic feet per second for the production of power prior to 1973, and the Montana Power Company is presently capable of utilizing up to 10,000 cubic feet per second for the generation of electrical power at this facility. However, due to the naturally occurring lesser flows of the Missouri River during most parts of the year, Montana Power Company actually uses far less than

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waters in excess of the capacity of the turbines at Cochrane Dam are generally from April 15 to approximately July 15 of any given year. However, the precise times at which the flows to the Missouri River exceed the capacity of the turbines at the Cochrane Dam facility in any given year necessarily vary widely around the above-described parameters to the peculiar conditions of water supply within the Missouri River system at such times.

16. Whenever the water is not being used by the Montana Power Company to produce electrical power at the Cochrane Dam facility and/or whenever water is not being diverted for storage for subsequent use for power production by the Montana Power Company at the Cochrane Dam facility, such waters will inevitably spill over the impoundment structure known as Cochrane Dam. Such spills occur at a relatively continuous basis during early spring months during which the waters of the Missouri River are in their high-flow stage. However, in particularly dry years, no waters of the Missouri River may spill over Cochrane due to Montana Power Company's use of the whole flow of the Missouri River for power production on a continuous basis at this hydroelectric facility.

17. Whenever such spills occur at the Cochrane Dam facility, there are unappropriated waters available for the Applicant. Historical records of the spills at Cochrane dam disclose that in most years there are unappropriated waters in the source of supply at the flow rates that Applicant seeks to appropriate the water.

diverted will actually be used by the crops and lost to the source of supply.

22. There are no permits evident from the face of the record which may be potentially affected by Applicant's proposed diversions. Equally, there are no water reservations on the face of the record.

23. In light of the fact that there are no surface waters available for Applicant's intended use after August 10 of any given year, even 562 acre-feet of water per year represents an unreasonable quantity in light of the demonstrated times during which Applicant will be able to use water for his intended purposes. Based on the number of irrigations contemplated, and the acreage to be devoted to irrigated crops, the Hearing Examiner finds that 325 acre-feet is the most water the Applicant can reasonably use for his intended purposes in any given year.

CONCLUSIONS OF LAW

1. MCA 85-2-311 (1979) directs the Department of Natural Resources and Conservation to issue a water use permit if the following conditions or criteria exist.

- (1) there are unappropriated waters in the source of supply:
 - (a) at times when the water can be put to the use proposed by the applicant;
 - (b) in the amount the applicant seeks to appropriate; and
 - (c) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

Worden v. Alexander, 108 Mont. 208, 90 P.2d 169 (1939). Sayre v. Johnson, 33 Mont. 15, 81 P. 389 (1905).

The evidence adduced at the hearing relating to the issue of whether there exists sufficient unappropriated water for the Applicant's intended purposes is immaterial. An Applicant is entitled to complete an appropriation of whatever waters that are in fact unappropriated, and which may be diverted without injury to other appropriators. A permit merely licenses a prospective appropriator to initiate his intended appropriation. Any rights evidenced by such a permit remain inchoate or conditional in nature, until such time as that permittee applies the waters countenanced by the permit to the described beneficial use. See MCA 85-2-312 (1979), MCA 85-2-315 (1979). If in fact the waters countenanced are insufficient for Applicant's purposes, and the Applicant is otherwise not capable of securing an additional quantity of water, it is inevitable that Applicant's plan will fail and that the appropriation will lapse. See also MCA 85-2-315(1) (1979).

Any contrary readings of the statutory criteria would lead the Department far afield in the evaluation of an application for a permit. Such theories would require administrative determinations of whether the prospective economic benefits to be derived from the use of the water would successively amortize the capital investment represented by the diversion works themselves, coupled with the cost of maintenance and repair. Such a decisional equation would not be complete, of course, without an ascertainment of whether the prospective revenues garnered by the

privilege of commanding such substantial quantities of river water merely to extract and use a smaller portion thereof. An appropriator's rights do not carry so far. See State ex rel Crowley v. District Court, 108 Mont. 89, 88 P.2d 23 (1939).

5. The priority date for this permit is August 28, 1979, at 11:00 a.m. That is the date and time at which the Application was duly and regularly filed with the Department of Natural Resources and Conservation. MCA 85-2-401(2) (1979).

6. The points of diversions for the waters claimed herein are located in the SE1/4NE1/4NE1/4 of Section 35, Township 18 North, Range 1 West, and in the SW1/4NW1/4NW1/4 of Section 36, Township 18 North, Range 1 West, all in Cascade County.

7. The source of supply for the waters claimed herein is the Missouri River.

8. The Applicant's proposed means of diversion and construction are adequate. They are technically feasible and customary for the intended use, and they will not result in the waste of the water resource. See State ex rel v. Crowley, supra.

9. The place of use for the waters claimed by the Applicant herein will be 270 acres more or less comprised of 15 acres in the NE1/4 and 25 acres in the SE1/4 of Section 35, Township 18 North, Range 1 West; and 30 acres in the NE1/4 and 25 acres in the NW1/4 and 45 acres in the SW1/4 and 125 acres in the SE1/4 of Section 36, Township 18 North, Range 1 West, all in Cascade County.

10. There exists unappropriated waters in the amounts Applicant seeks, but not throughout the May 1 through October 15,

riparian marriage of land to water thus unreasonably impeded the full development of Montana's resources.

Equally fundamental to this shift of attention towards the encouragement of the development of the water resource was the appropriation system's emphasis on the protection of the capital investments required to put this water to beneficial use. Although the physical factors determining the amount of water available in the source of supply may continue to plague an appropriator, uncertainties as to supply threatened by man-made alterations were curtailed by the appropriative doctrine. Unlike the riparian features of "reasonable use" and sharing in times of shortages, the talisman of the appropriation system is the exclusivity of use by any appropriator. The hoary maxim of "qui prior est tempore, portior est in jure," while having given way to the intelligible formula of "first in time, first in right," remains as the fundamental tenet of the appropriation doctrine. The first to apply water to a beneficial use is entitled to the maintenance of that use against all subsequent appropriators. MCA 85-2-401(1) (1979), MCA 85-2-406 (1) (1979).

Applying these basic principles to the instant matter, it appears from the record that Montana Power Company has historically used approximately 10,000 cfs of the flow of the Missouri River to generate electrical power for sale and stands ready and has the capacity to produce and market on a consistent basis that quantity of electricity that would be produced by a flow of 9500 cubic feet per second. The Missouri River, however, does not now nor has it historically passed such large quantities

as contemplated in this application will result in an adverse effect to Montana Power Company and thus the same is properly conditioned. Unless Montana Power Company's Cochrane Dam facility is "spilling" water, the flow of the Missouri River is insufficient to supply this Objector with the full measure of its historic water usage. Diversions upstream throughout such periods as Cochran fails to spill will only augment these depletions. It is true that the effect of Applicant's diversions on the Missouri Mainstem at or about the Cochrane Dam will be immeasurable at any given time. This does not make the Applicant's threatened interferences trifling, however. There may be circumstances in which a prior appropriator may suffer minor depletions due to the engineering difficulties inherent in quantifying and regulating various uses on the stream. "As in other human problems, into which varying factors enter, it is not to be expected that results may be obtained with absolute mathematical certainty." Donich v. Johnson, 77 Mont. 229, 253, 250 P. 936 (1926); See also Allendale Irr. Co. v. State Water Conservation Board, 113 Mont. 436, 127 P.2d 227 (1942). However, these concerns cannot be heralded in carte blanche fashion to license encroachments where adverse effect is evident based on uncertainties involved in ascertaining the precise measure of that adverse affect.

The plain inference from the evidence herein is that Montana Power Company is already being "adversely affected" by a multitude of junior diversions on the upper reaches of the Missouri River drainage. Applicant's proposed diversions will at

able to pay more for the existing use than it is worth to its holder. See MCA 85-2-402, 403 (1979).

The significant and continuous demands for water by power production enterprises demonstrates most markedly the "selfish" characteristics of the prior appropriation system. "So, the rule of priority right was adopted, in order that the few who were first might live and live well rather than that the many should starve or else eke out a miserable existence." Kinney on Irrigation, Sec. 780. When the legislature of this state intends to subordinate such power production to other uses of the water resource, it expressly so states. See MCA 85-1-122 (1979).

Applicant's focus on the fact that some of the electricity generated by Cochrane Dam may be sold to out-of-state consumers is not material. Any of the end products of the use of water may be so marketed, and this cannot be said to detract from the beneficial characteristics of the use of such water. Whenever the Cochrane Dam facility fails to spill, the inevitable and necessary affect of diversions made pursuant to the present application is to curtail power production by Montana Power, or to force this Objector to make up the same by the more expensive process of coal-based electrical production. This is adverse affect within the meaning of the statute. See generally Donich v. Johnson, 77 Mont. 229, 250 P. 963 (1926).

12. The evidence justifies a conclusion that the present application and a permit pursuant thereto can be conditioned so as to protect the prior rights of the Montana Power Company by restricting applicant's diversions to those periods during which

However, the record herein does not so reasonably establish waste by any particular user of the water resource.

There will be some timing problems associated with the above-stated condition. However, the relatively modest time periods required for the water to flow from Applicant's point of diversion to the location of the Cochrane dam will not frustrate this condition for the purposes of the permitting process. Such delays will only require the objector herein to utilize the water stored in its impoundment structure.

14. The application as limited herein will not unreasonably affect developments for which a permit has been issued, nor will it affect any water reservation.

WHEREFORE, based on these findings of fact and conclusions of law, the following proposed order is hereby issued. Subject to the terms, restrictions, and limitations described below, Application for Beneficial Water Use Permit No. 24199-s41QJ is hereby granted to Vance Pettapiece to appropriate 2200 gallons per minute up to 325 acre-feet per year for new sprinkler irrigation. The source of supply shall be the Missouri River in the SE1/4NE1/4NE1/4 of Section 35, Township 18 North, Range 1 West, and in the SW1/4NW1/4NW1/4 of Section 36, township 18 North, Range 1 West, all in Cascade County. The place of use shall be 270 acres more or less comprised of 15 acres in the NE1/4 and 25 acres in the SE1/4 of Section 35, Township 18 North, Range 1 West; and 35 acres in the NE1/4 and 25 acres in the NW1/4

reasonably required for the above-described purposes. At all times when water is not reasonably required for these purposes, the Permittee shall cause and otherwise allow the waters to remain in the source of supply Missouri River.

E. The Permittee shall not install or allow to be installed pumping devices with rated capacities in excess of 2200 gallons per minute.

F. In the event that the rights of the Montana Fish and Game Commission on the Missouri River are quantified at a later time, this provisional permit shall be accordingly amended and modified to protect the prior rights of the Montana Fish and Game Commission.

NOTICE

This Proposed Order is offered for the review and comment of all parties of record. Exceptions and objections to this Proposal for Decision must be filed with and received by the Department of Natural Resources and Conservation on or before November 13, 1981.



Matt Williams, Hearing Examiner
Department of Natural Resources
and Conservation
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